IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R.S.A.No.888 of 1991

Date of Decision : November 01, 2006.

Sohan Singh ..... Appellant

Vs.

State of Punjab and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Paramjit Singh Goraya, Advocate
for the appellant.

Mr.G.C.Gupta, DAG, Punjab.

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P.S.Patwalia, J. (Oral) :

The present Regular Second Appeal has been filed by the plaintiff against concurrent findings recorded by the courts below whereby the trial court dismissed the suit filed by him and a first appeal filed by the plaintiff against the said judgment was also dismissed.

The following two questions of law arise for determination in this Regular Second Appeal :-

(i) Whether the transfer/relieving of appellant was illegal/unauthorised ?

(ii) Whether the appellant could be made to suffer on account of

illegal/unauthorised order of transfer/relieving ?

The plaintiff had filed a suit for declaration to the effect that he is entitled to salary for the period from 19.4.1982 up to 20.1.1983 and the said period should be regularised towards duty for all intents and purposes. He also contended that his service book should be completed.

The facts as emerge from the judgments of the courts below are that the plaintiff was working as JBT teacher and in April 1982 was posted in the Government Primary School, Cheema Khuddi, District Gurdaspur. He was relieved from the said school as a result of his transfer by the Head Teacher of the School on 19.4.1982. Rather than joining at the transferred place of posting, the plaintiff absented himself from duty and started agitating that his transfer was not valid and legal. He had contended that the teacher having the longest stay in the school was to be relieved. According to him one Sawinder Kaur working with him was having longer stay than him and therefore she should have been transferred first. He therefore claimed that his transfer from the school was not legal. He further contended that the Head Teacher of the school was not authorised to transfer him.

The defendants filed a reply taking a stand that on joining of Sohan Lal as Head Teacher in the aforementioned school in April 1992, one teacher was required to be relieved. Sawinder Kaur who had the longest stay was not relieved as she was a patient having prolonged illness. She even produced her medical certificate to claim that benefit. It is for this reason that the plaintiff had been relieved. It is further pleaded that the plaintiff had come to school on 19.4.1982 and marked his presence in the daily Teacher's Attendance Register from 15.4.1982 to 17.4.1982 though he was absent from the school on those days. It is further contended that

18.4.1982 was Sunday. He left the school without any leave application or giving any intimation to anybody and did not turn up till the closing hours of the school. Sohan Lal issued a relieving chit to the plaintiff and sent the same by registered post which was not received by him and came back undelivered. It was again sent to him at his residential address with a copy to the Block Primary Education Officer. It is further stated that thereafter a letter was received from the Block Primary Education Officer in May 1982 wherein it was mentioned that if there was a vacancy of JBT teacher in the school, then there was no necessity to dislocate either the plaintiff or Sawinder Kaur. A post of JBT teacher was lying vacant in the school at that time. However since the plaintiff was absenting himself he could not be made to resume duty. He ultimately joined on 20.01.1983. Even though he had remained absent the department took a lenient view and decided that the period of absence would be treated as leave of kind due. However the plaintiff has refused to apply for such leave and has been insisting that this period should be regularised. It is stated that in fact, the action of the plaintiff in not applying for leave and in not receiving the salary for the subsequent period, amounts to insubordination.

After examining the controversy the trial court as also the Lower Appellate Court have taken a view that even if it is assumed that the plaintiff was wrongly relieved from the Government Primary School, Cheema Khudd, District Gurdaspur, he could not have absented himself. He should have joined at the new place of posting and then represented to the defendants for his grievance. It has further been noted by the trial court while considering the evidence led by the defendants that the plaintiff had remained absent from duty from 19.4.1982 onwards and during this period the department had asked the plaintiff to join duty but he refused. In fact,

on 20.7.1982 the then Block Primary Education Officer inspected the school of the plaintiff where he was found absent. Ultimately the plaintiff joined duty in the same school on 21.1.1983. The trial court therefore found no merit in the claim of the plaintiff and dismissed the suit. These findings were affirmed by the Lower Appellate Court as well.

I have heard Mr.P.S.Goraya, learned counsel for the appellant and Mr.G.C.Gupta, learned Deputy Advocate General for State of Punjab and also perused the paper book.

Shri Goraya has contended on the strength of a letter dated 18.5.1982 that a reading of the letter would show that it is only in the case of a heart ailment, tuberculosis or cancer that a person need not be transferred. He further submits that it has been mentioned in the letter that the plaintiff should be permitted to join in the same school. It has further been mentioned in the endorsement that in case there is any post of JBT teacher lying vacant in the school, the plaintiff can be asked to join. He therefore submits that the order transferring the plaintiff in spite of Sawinder Kaur having longer stay than him and not suffering from the ailments mentioned in the letter referred to above, was illegal. He further submits that the Head Teacher could not have transferred the plaintiff. He therefore submits that since the order of transfer was not a valid order and no adverse consequences can accrue to the plaintiff on that basis. For this purpose he relies upon a judgment of Hon'ble Supreme Court in ***Dr.Ramesh Chandra Tyagi vs. Union of India and others*** reported as ***1994 (1) SLR 838***. He further states that no relieving order had ever been served upon the plaintiff.

As against this learned counsel for the Stated contends that the letter dated 18.5.1982 was only a clarification issued by Block Primary

Education Officer that one teacher was to be relieved on the joining of Shri Sohan Lal as Head Teacher. The plaintiff had been relieved. He submits that even if there was some irregularity in the relieving of the plaintiff it was incumbent upon him to have joined his new place of posting and thereafter to agitate against the same. A government employee cannot remain absent and then claim full salary for the said period. In support of his contention he relies upon a judgment of Hon'ble Supreme Court in the case of ***Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani*** reported as ***1989 (2) RSJ 399.*** He further states that there is a proper relieving order which was sent to the plaintiff two times over and lastly by registered post. However since the plaintiff refused to take it, it came back undelivered to the department.

After hearing learned counsel for the parties, I find no merit in the plea raised by the learned counsel for the appellant. I am of the opinion that the plaintiff had been relieved by the Head Teacher as a result of joining of Shri Sohan Lal. The relieving was necessitated as one teacher in the school at that time had become surplus. Taking Sawinder Kaur to be ill the plaintiff who had the next longest stay was relieved. Even if the plaintiff had any grievance against the same he should have joined his fresh place of posting and then raised a grievance regarding the same. It does not behove a government employee to remain absent and not join the fresh place of posting on transfer. Still further the facts of this case would show that in May 1982 itself, another post of JBT teacher had become available. The plaintiff being absent did not join on the same. It has come in the evidence of DW-2 Om Parkash that the respondents had been asking the plaintiff to join duty but he refused to do so. Ultimately he joined on 21.1.1983. I thus find that the respondents have been very lenient with the

plaintiff by treating the period of his absence as leave of the kind due. In taking this view that upon transfer, it is incumbent upon a government employee to join his fresh place of posting, I am fortified by the observations of Hon'ble Supreme Court in *Atmaram's* case (supra) which are as hereunder :-

> *"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in the public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the*

> *ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."*

In so far as the judgment relied upon by the learned counsel for the appellant is concerned, a reading of the same would show that the same was rendered in view of the peculiar facts of that case. Dr.Ramesh Chandra Tyagi, a Ph.D. in Solid State Physics from the University of Hull, England and a researcher and scholarly man of learning was directed to hand over the charge of his activities being technical armament projects to another incumbent. A reading of the para 2 of the judgment would show that though he was not satisfied with his transfer yet when no injunction was granted by the Court, he joined at IIT, Delhi but not being satisfied, approached the civil court by way of a civil suit seeking declaration that the transfer order was malicious, bad and motivated and not passed by the Secretary who alone was competent to transfer him. Subsequently when his deputation at IIT came to an end and because of above litigation he was directed to join at Pune. Thereafter again there was spate of litigation which was noted by Hon'ble the Supreme Court and it is in these circumstances that a view was taken that terminating the services of such a scientist on allegation of non-joining at the new place of his transfer was invalid and nonest. The factual position in this case is totally different. I am therefore of the opinion that the said judgment would have no

application in the facts and circumstances of this case.

For the reasons aforementioned, both questions of law are answered against the appellant. I am of the opinion that in the present case, the transfer or relieving of the appellant was not illegal or against any law. However even if some other employee was liable to be transferred in place of the plaintiff he should have joined at the fresh place of posting and then agitated against the same. I am further of the opinion that the appellant has not suffered anything on account of his non-joining at the transferred place and rather the respondents have taken a very lenient view and have regularised the entire period of absence as leave of the kind due.

I find no merit in the present Regular Second Appeal and the same is accordingly dismissed.

Since the appellant has already retired from service on 31.7.2005, respondents are directed to complete his service book within a period of two months from the date of receipt of certified copy of this order and thereafter to pay all his remaining terminal dues, if any, within a period of one month thereafter.

The original service book which is attached with the record of this case, would be handed over to learned counsel for the State immediately by the Court Secretary against a proper receipt.

November 01, 2006 (P.S.Patwalia)
monika Judge